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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lakshmi International

Serial No. 76493360

Jill M. Pietrini of Manatt, Phelps & Phillips, LLP for
Lakshmi International.

Hannah Fisher, Trademark Examining Attorney, Law Office 111
(Craig D. Taylor, Managing Attorney).

Before Seeherman, Chapman and Kuhlke, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Lakshmi International (a California corporation) filed
an application on February 27, 2003, to register on the
Principal Register the mark LAX-MAX for goods ultimately
amended to read: "stereophonic headphones, universal
remote controls for television recording units and stereos,
electrical adapters, audio cassette conversion apparatus,
television sets, car stereos, audio speakers, radios,
telephones, audio cassette recorders, CD players,

electrical power extension cords, automatic electrical distribution apparatus, calculators, head cleaning tapes and discs for VCRs, CD players and audio equipment, antennas, microphones, walkie-talkies, batteries, CD holders, videocassette rewinders, portable stereo units, cellular telephones, personal stereos, mobile telephones, video cassette recorders, DVD and CDR recorders, video cameras, camera cases, camera flashes, and camera tripods" in International Class 9.¹ The application is based on applicant's assertion of a bona fide intention to use the

¹ The Examining Attorney had made final some requirements regarding applicant's identification of goods. In the November 9, 2004 Office action denying applicant's request for reconsideration, the Examining Attorney stated the following: "Applicant has amended a number of items in the description of goods. However, the final requirement is continued as to electrical adapters. Upon further consideration, inquiry is made whether this equipment is electrical converters which appear in the Office's on-line classification manual." Later in the same Office action she stated: "Because applicant has not filed an appeal with the Trademark Trial and Appeal Board, and there is no time remaining in the response period, the application will be deemed abandoned in due course..." The "six-month response" clause was deleted from this Office action.

It is clear from the additional statements that the Examining Attorney did not raise a new inquiry in her denial of the request for reconsideration. Thus, we will not remand the application to the Examining Attorney regarding the identification of goods. In fact, both applicant and the Examining Attorney refer to the issue in this appeal only as the refusal under Section 2(d), and the Examining Attorney includes the item "electrical adaptors" in her restatement of applicant's identified goods in her brief on appeal. The Board considers the requirement regarding the identification of goods to have been withdrawn by the Examining Attorney.

mark in commerce pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b).

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used on its identified goods, so resembles the registered mark LAX for "watches" in International Class 14,² as to be likely to cause confusion, mistake or deception.

When the refusal was made final, applicant appealed.³ Briefs have been filed, but applicant did not request an oral hearing.

We affirm the refusal to register. In reaching this conclusion, we have followed the guidance of the Court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie*

² Registration No. 2613563, issued August 27, 2002.

³ Although, as noted in footnote 1, the Examining Attorney believed that the application was abandoned for failure to file an appeal, in fact applicant did file a timely notice of appeal.

Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The Examining Attorney contends that the marks are similar as applicant's mark merely adds a laudatory, common term "max" -- meaning "maximum" as argued by applicant; that applicant's arguments that consumers could perceive "lax" as signifying applicant's business name "Lakshmi" or the code for the Los Angeles airport (LAX) are unsupported by evidence thereof; that the registrant's and applicant's respective goods are related products; that applicant's deletion of the item "radios including clocks" from its identified goods does not obviate the likelihood of confusion; that neither registrant's nor applicant's identification of goods is restricted as to trade channels or purchasers; and that doubt must be resolved in the registrant's favor.

The Examining Attorney submitted printouts of numerous third-party registrations to show that "a single source is likely to sell both watches and a variety of consumer electronic products such as headphones, antennas, cameras, batteries, remote controllers, televisions, stereos, audio speakers, radios, telephones, and calculators." (Final Office action, p. 2.)

Applicant argues that the marks are "distinct in appearance, sound, and meaning" (brief, p. 2); that the term LAX is commonly used for consumer products and is weak and entitled to limited protection; that the respective goods are not related, with registrant selling watches and applicant selling "consumer electronics used in the home, office or car for audio, video and cellular needs" (brief, p. 6); that under an evaluation of the question of likelihood of confusion, the Examining Attorney has not shown that the same entities regularly offer watches as well as various audio and video equipment under the same mark; that the respective goods are sold through different channels of trade to different purchasers, with registrant selling its licensed watches (with well known trademarks thereon) to wholesalers and applicant selling its goods through its retail showroom and store in Los Angeles, California and through other retail stores; and that the purchasers of registrant's and applicant's different goods are not likely to believe the source of one is the source of the other.

Turning first to a consideration of the marks, we view them in terms of their sound, appearance, connotation and commercial impression. See *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed.

Cir. 2005). In this case, registrant's mark consists of the letters LAX and applicant's mark LAX-MAX begins with the letters LAX in applicant's two-syllable mark. The first part of a mark is often the part impressed upon the mind of the purchaser, and the most likely to be remembered. See *Presto Products, Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895 (TTAB 1981). The addition of a word to a registered mark does not generally avoid confusion. See *Menendez v. Holt*, 128 U.S. 514 (1888); *Coca-Cola Bottling Co. V. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (CCPA 1975); and *In re El Torito Restaurants Inc.*, 9 USPQ2d 2002 (TTAB 1988).

There is no evidence of record as to customer perception of the connotation of either "LAX" or "MAX." However, we take judicial notice of The American Heritage Dictionary (Fourth Edition 2000) definition: "**max.** abbr. maximum." We find applicant's argument that consumers will think of "MAX" as referring to "maximum" to be quite reasonable. However, applicant's arguments that consumers will perceive "LAX" as the Los Angeles airport code or the business name of applicant are unsupported and unpersuasive, particularly in the context of applicant's goods. In any event, whatever the connotation of "LAX" may

be, it will presumably be the same for both applicant and registrant.

Importantly, under actual market conditions, consumers generally do not have the luxury of making side-by-side comparisons. The proper test in determining likelihood of confusion is not a side-by-side comparison of the marks, but rather must be based on the similarity of the commercial impressions engendered by the involved marks. See *Dassler KG v. Roller Derby Skate Corp.*, 206 USPQ 255 (TTAB 1980). The differences in the marks (applicant's addition of a hyphen and the syllable "MAX") do not serve to distinguish the marks here in issue. That is, purchasers are unlikely to remember the specific differences between the marks due to the recollection of the average purchaser, who normally retains a general, rather than a specific, impression of the many trademarks encountered. Purchasers who do note the additional element MAX in applicant's mark are likely, because of the laudatory significance of MAX, to view LAX-MAX as a variation of registrant's mark LAX, and to assume both marks indicate goods emanating from a single source.

We find that the marks are similar in sound, appearance, connotation and commercial impression. See In

re Azteca Restaurant Enterprises Inc., 50 USPQ2d 1209 (TTAB 1999).

Applicant's argument that "LAX" is a weak mark is presented for the first time in its brief on appeal (pp. 8-9) and includes a typed listing of third-party applications and registrations of "LAX formative marks in Class 9" (brief, p. 8), indicating only the marks and the registration/application numbers. The Examining Attorney properly noted that this evidence is inadmissible as applicant did not timely submit evidence of third-party registrations in a proper format.

Even if the listing had been made of record, it has little probative value. Applications are evidence only that the applications were filed on a particular date. Third-party registrations are not evidence of use in the marketplace or public familiarity with the third-party marks. See *AMF Incorporated v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973); and *In re Phillips-Van Heusen Corporation*, 228 USPQ 949, footnote 5 (TTAB 1986). Further, because the list shows only the marks and not the goods or services, it does not establish that LAX has a suggestive significance for the goods shown in the cited registration or applicant's application.

Turning to the relatedness of the goods, the question of likelihood of confusion must be determined based on an analysis of the goods or services identified in applicant's application vis-a-vis the goods or services identified in the registration.⁴ See *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); and *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

As explained previously, in support of the refusal to register, and particularly the relatedness of the respective goods, the Examining Attorney has submitted copies of several third-party registrations, all based on use in commerce, indicating the same entities offer both watches and various electronic consumer items under the same mark. See, for example, the following:

Registration No. 2814973, with goods in International Classes 9 and 14, for, inter alia, "television sets; radios; video cassette recorders; video cameras; ... headphones; ... earphones; microphones; ... calculators; ... batteries; ..." and "watches, clocks and jewelry";

Registration No. 2728063, with goods in International Classes 9 and 14, for, inter alia, "consumer audio and video

⁴ The Examining Attorney argues applicant's website indicates that applicant sells "alarm clocks." This is irrelevant as "alarm clocks" are not included in applicant's identification of goods.

electronic products, namely, ... compact disc players, ... walkie-talkies, audio speakers, headphones, microphones, ...radios, radio antennas, televisions, telephones, ..." and "watches, alarm clocks, and clocks incorporating radios ... ";

Registration No. 2237855, with goods in International Classes 9 and 14, for, inter alia, "audio cassette recorders, radios, ... compact disk players, headphones, calculators, ... telephones, ..." and "clocks, watches";

Registration No. 2119472, with goods in International Classes 9 and 14 (Class 11 goods cancelled), for, inter alia, "calculators, audio cassette players, radios, stereo headphones, telephones,..." and "clocks and watches";

Registration No. 1632969, with goods in International Classes 9 and 14, for, inter alia, "radios and calculators" and "clocks,... watches";

Registration No. 2352467, with goods in International Classes 9 and 14, for "calculators and parts therefor" and "watches and clocks and parts therefor"; and

Registration No. 1659538, with goods in International Classes 9 and 14, for, "calculators" and "watches."

When considering the third-party registrations submitted by the Examining Attorney, we remain mindful that such registrations are not evidence that the marks shown therein are in use or that the public is familiar with them. Such third-party registrations nevertheless have

some probative value to the extent they may serve to suggest that such goods are of a type which emanate from the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, footnote 6 (TTAB 1988). Thus, the third-party registrations submitted by the Examining Attorney are evidence of the relatedness of the respective goods in that they show applicant's identified goods and the goods listed in the cited registration may emanate from a single source and be sold under a single mark.⁵ See *Hewlett-Packard Company v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002)("even if the goods and services in question are not identical, the consuming public may perceive them as related enough to cause confusion about the source or origin of the goods and services"); and *Recot Inc. v. M.C. Becton*, 214 F.3d 1332, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000)("even if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods. It

⁵ We note that many of the approximately 80 third-party registrations submitted by the Examining Attorney are for house marks or merchandising marks. Because of the variety of goods with which such marks are used, we have not given them weight in our consideration of the relatedness of the goods.

is this sense of relatedness that matters in the likelihood of confusion analysis.").

We find that the respective goods are related.⁶

Applicant argues that the goods are "directed to completely different markets and different customers" (brief, p. 8.) in that, for example, applicant sells retail, while applicant contends that registrant sells its goods to retailers. There are no limitations in either applicant's or registrant's identifications of goods as to trade channels and purchasers. Thus, we must presume that the goods travel in all their normal channels of trade and that they are purchased by the same classes of purchasers, which in this case is the public at large. See *Canadian Imperial Bank v. Wells Fargo Bank*, supra. Moreover, even if registrant sold its goods through wholesale trade channels, the goods could in turn be sold by those retailers to the general public.

We find that the respective goods, as identified, could be offered through the same or at least overlapping channels of trade to the same consumers.

⁶ Applicant's arguments to the contrary are not supported by any evidence. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir.) (The issue in the case was mere descriptiveness, but the Court discussed an applicant's burden of coming forward with evidence in support of its arguments.)

In view of the similar marks, the relatedness of the goods, and the same or overlapping channels of trade and purchasers, we find that applicant's mark LAX-MAX, when used by applicant for its identified goods, is likely to cause confusion with the registered mark LAX for watches.

Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.